

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jim Kelly,
Petitioner-Appellant.

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-0424
Parcel No. 221/00107-123-000

On November 23, 2011, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Jim Kelly was self-represented and requested a hearing; however, he did not appear. The Polk County Board of Review designated Assistant County Attorney Ralph Marasco, Jr. as its representative. The Appeal Board having reviewed the record and being fully advised, finds:

Findings of Fact

James (Jim) Kelly is the owner of a residential, single-family property located at 700 S Hickory Boulevard, Pleasant Hill, Iowa. The property is a split-foyer design, built in 1975, and has 952 square feet of living area on the main level. The basement is 920 square feet, part of which houses a two-car built-in garage.¹ The basement also has 368 square-feet of finish. The property condition is rated as above normal. There are no decks, patios, or porches noted. The site is 0.232 acres.

Kelly protested to the Polk County Board of Review regarding the 2011 assessment of \$114,700, which was allocated as follows: \$27,700 in land value and \$87,000 in improvement value. His claim was based on the following grounds: 1) that the assessment was not equitable as compared

¹ The amount of square feet devoted to the garage is not in the record.

with the assessments of other like property under Iowa Code section 441.37(1)(a); 2) that the property was assessed for more than the value authorized by law under section 441.37(1)(b) and asserting the correct total value was \$100,000; 3) that there is an error in the assessment under section 441.37(1)(d), essentially asserting the condition is not properly considered; and 4) that there has been a change in the value since the last assessment under 441.37(1) and 441.35(3). In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim.

The Board of Review denied the protest.

Kelly then appealed to this Board reasserting his claims.

On his protest form to the Board of Review, Wilson listed three properties as equity comparables. The properties are: 714 S Hickory Boulevard; 310 N Pleasant Hill Boulevard; and 420 N Pleasant Hill Boulevard. The three properties are all one-story homes with above-grade living areas ranging from 936 to 1250 square feet. Although the properties are one-story homes compared to the subject's split-foyer design, they do appear to offer similar overall utility. The properties appear to be reasonably comparable in terms of size. However, while one of the three properties was built in 1975, the same year as the subject; two of the properties were built in 1920 and 1913. Additionally, the properties are rated by the assessors office as normal condition compared to the subject's above normal condition rating. Kelly did not make any comparisons between these properties and the subject property for an equity analysis.

None of the properties are sales and therefore would not be considered for a market value claim. Kelly did not provide any evidence in support of a market value claim.

The record includes an appraiser's analysis completed by the Assessor's office for the Board of Review. This analysis includes a comparison of five properties. All five are similar split-foyer designs, built between 1968 and 1975. They range in size from 912 to 1002 square feet. Two of the

properties sold in 2009 and three sold between May and July 2010. Sales prices for all five properties range from \$135,000 to \$148,000. After adjustments for differences, the sale prices range from \$104,000 (rounded) to \$122,000 (rounded.)

The appraiser's analysis recommended no change to the Board of Review, citing "this home is already receiving an adjustment from the Appeals Board." We note this property was appealed in 2009, but was stipulated prior to hearing with this Board. While the Board approved the stipulation, the stipulation itself was agreed to between the parties.

In his appeal to this Board, Kelly asserts the condition of his property is not above-normal as reported on the property record card. He reports water damage to the garage ceiling caused by a leaking sink and water damage to the basement finish caused by a leaking toilet, with some mildew and mold in the northwest corner. The flooring through the home is dated (25 years old) and in poor condition. There is unstained/poorly installed woodwork throughout the home, and exterior maintenance and landscaping in need of repair or updating.

In his appeal, Kelly requests an inspection of his home. At hearing, Assistant County Attorney Marasco provided a professional statement indicating the assessor's office had left several messages with Kelly to set an appointment for inspection. As of the hearing date there had been no response. Based on Kelly's appeal to this Board, it is apparent there is a disagreement about the condition rating of the subject property. It appears attempts have been made by the assessor to inspect the property. It would seem prudent for Kelly to be proactive in returning the phone calls or calling the Assessor himself to schedule a time for inspection.

Lastly, Kelly provided this Board with an August 11, 2011, six-page estimate from Crawford and Company, Davenport, Iowa. The estimate is to repair roof and gutter damage which resulted from a hail storm in June 2011. We do not find this information persuasive in establishing a market value for the subject property as of January 1, 2011.

In the end, Kelly did not offer any evidence in regards to a market value claim.

The Board of Review did not offer any evidence.

Based on the foregoing, we find the preponderance of evidence does not demonstrate the subject property is inequitably assessed or assessed for more than authorized by law.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the

property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 579-580. The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1).

Kelly provided three properties he considered to be equity comparables; however, no adjustments were made for differences and he did not provide a ratio analysis. Kelly did not show inequity under the tests of *Maxwell* or *Eagle Foods*.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Kelly did not offer any evidence of the fair market value of his property to support this claim.

Section 441.37(1)(d) is not limited solely to clerical or mathematical errors. The plain language of section 441.37(1)(d), on which the appellant rests his claim, allows a protest on the ground “[t]hat there is an error in the assessment.” § 441.21(1)(d). The administrative rule interpreting this section indicates that the error may be more than what is alleged by the Board of Review. While “[a]n error in the assessment *would most probably* involve erroneous mathematical computations or errors in listing the property[,] [t]he improper classification of property also constitutes an error in the assessment.” Iowa Administrative r. 701-71.20(4)(b)(4) (emphasis added). This language suggests that other errors may constitute grounds for appeal pursuant to section 441.37(1)(d). It is apparent Kelly considers the condition rating of above-normal to be in error. However, other than a written explanation, no

physical evidence such as photos, were presented to demonstrate the condition of the home. Kelly has requested an interior inspection by the Assessor's office. The record indicates the Assessor's office has made several attempts to contact Kelly with no success. We would recommend Kelly be proactive and call the Assessor's office himself to schedule an inspection to verify and confirm the condition of the property.

THE APPEAL BOARD ORDERS the assessment of James Kelly's property located at 700 S Hickory Boulevard, Pleasant Hill, Iowa, of \$114,700, as of January 1, 2011, set by the Polk County Board of Review, is affirmed.

Dated this 4 day of January, 2012

Karen Oberman
Karen Oberman, Presiding Officer

Richard Stradley
Richard Stradley, Board Chair

Jacqueline Rypma
Jacqueline Rypma, Board Member

Cc:

Jim Kelly
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APPELLANT

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REPRESENTATIVE FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>1-4</u> , 2012	
By	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>